



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

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February 8, 2023

Via ECF

The Honorable Jesse M. Furman
United States District Court for the Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square, Room 2203
New York, NY 10007

Re: *People of the State of New York v. Arm or Ally, LLC, et al.*, No. 22 Civ. 6124

Dear Judge Furman:

This Office represents Plaintiff, the People of the State of New York (the “State”), in the above-referenced matter. Pursuant to this Court’s January 24, 2023 Order, ECF No. 117, the State respectfully moves for certain limited discovery that is necessary to facilitate early mediation efforts, will be necessary at a later stage in this case in any event, presents a minimal burden on Defendants, and is in the interests of justice and the efficient administration of this case.¹ The parties conferred and all Defendants oppose the State’s request in full. The State also requested a separate meet and confer with Defendant Indie Guns, but upon reviewing the State’s request by email, counsel for Indie Guns stated opposition and declined to meet and confer.

The State Seeks Limited Discovery.

For the reasons stated below, the State asks leave to propound on all Defendants (i) one interrogatory, seeking from each Defendant a list of every instance where it shipped an unfinished frame or receiver to a customer in New York State, including the customer’s name, the shipping and billing addresses, the date of shipment, the number of unfinished frames and receivers in the order, and the make and model of the products sent, covering the time period of June 29, 2016 through the present day, and (ii) two document requests, seeking the production of all documents in each Defendant’s possession, custody and control concerning each NY shipment disclosed in response to the State’s proposed interrogatory, including invoices, packing or shipping records,

¹ This letter motion for discovery is overlong in the interest of consolidating two separate letters for related relief. As presented in more detail below, the State seeks limited discovery from all Defendants, and also seeks additional, separate discovery from Defendant Indie Guns. While the Court’s page limit for each such application is 3 pages, we respectfully submit one 5-page letter incorporating both requests and the State’s basis for relief.

Hon. J. M. Furman

Page 2

proofs of delivery, and payment receipts or records; and all non-privileged communications between Defendants from June 29, 2022 through the present concerning the retention and/or destruction of sales, customer, or shipping data.

For the reasons stated below, the State also seeks leave to propound on Defendant Indie Guns (i) three interrogatories seeking the identity of all ecommerce or payment platforms or processors used by Indie Guns since January 1, 2016 through the present day; all banks used by Indie Guns or any individual acting on its behalf, including but not limited to Lawrence Destefano, in the course of its business; and all social media accounts (*i.e.*, Instagram, Discord, Facebook), websites, private instant messaging boards or services (*i.e.*, Telegram, Snapchat), and/or other electronic means of communication, including email or postings to third party pages, which Indie Guns (or any individual acting on its behalf) has used since June 29, 2022 through today for marketing purposes or to otherwise communicate with the general public or New York residents concerning its business, the sale of unfinished frames or receivers, and/or this lawsuit, and (ii) five document requests, seeking all documents pertaining to the following phone number: (407) 375 – 2333, including all records of all calls and/or text messages received or sent; a complete imaging of any devices (any phone, tablet, or other device) that operate by connection to a network using the following phone number: (407) 375 – 2333; all communications, dated June 29, 2022 through today, between all ecommerce or payment platforms or processors used by Indie Guns since January 1, 2016 through the present day and Indie Guns (or any employee, principal, or other individual acting on its behalf); all communications, dated June 29, 2022 through today, between any individual that to Indie Guns’ knowledge may reside in New York and Indie Guns (or any employee, principal, or other individual acting on its behalf) concerning the sale of unfinished frames or receivers, including but not limited to any communications made by private encrypted messaging services, like Telegram, or via social media, like Instagram direct messages; and all documents and communications pertaining to Lawrence Destefano’s public claim to have engaged in spoliation of materials that are subject to disclosure under FRCP 26.

The State’s Request for This Limited Discovery While All Other Discovery Is Stayed Should be Granted Because Time Is of the Essence.

A. The State’s Requests from All Defendants are Narrowly Tailored to Immediate Need.

This basic information about Defendants’ shipments of unfinished frames and receivers into New York is straightforward and unquestionably relevant. The information will necessarily be produced sooner or later, as Defendants’ shipments are pertinent to each and every one of the State’s claims. Moreover, the State’s limited requested discovery is not overly burdensome on Defendants at this stage, as the materials are not voluminous, consist of sales and shipping data maintained in the normal course of business, and should not present any collection or preservation challenges that necessitate extraordinary costs or efforts to produce.²

Indeed, four overlapping Defendants between this action and that filed by the City of New York (Index. No. 22-cv-06124) have demonstrated that this information is readily available and

² Even if collection or preservation challenges exist, the State should be made aware of such challenges immediately, rather than months later when full scale discovery begins, as contemplated by the parties’ Rule 26(f) conference obligations, which Defendants unilaterally abbreviated.

Hon. J. M. Furman

Page 3

subject to immediate production. Specifically, in the City's case, Defendants Rockslide, Rainier Arms, Salvo Technologies (d/b/a "80p Builder"), and Arm or Ally produced to New York City information that is substantially similar to what the State seeks here. These prior productions belie any argument that the State's demand is outsized in terms of scope or burden, or that this discovery does not go to the core of this dispute.

The basic shipping information requested is also important to facilitating any potential settlement. Indeed, there is no realistic possibility of settlement negotiations without this information being produced. Without knowing how many unfinished frames and receivers Defendants sent to New York consumers, the State is unable to reach a demand unique to the conduct and relative market share of each Defendant. The date and recipient of each shipment are also necessary because the statutory context varies depending on what laws were in effect at the time and place each shipment was sent.

The need for this disclosure has become increasingly urgent, as the individual rules of the Magistrate Judge in this case, the Honorable Katharine H. Parker, require the State to issue a settlement demand, which cannot be done without knowing how many shipments Defendants sent, when, and to whom. The information will also enable the State to continue its work of analyzing the dangerous condition caused, maintained or contributed to by Defendants.

B. The State's Additional Requests from Defendant Indie Guns Address Admitted Spoliation and Are Designed to Prevent Further Prejudice.

The State recently learned that Defendant Indie Guns, through its principal Lawrence Destefano, has stated in multiple videos posted publicly on an Instagram account that is owned and operated by Indie Guns for marketing purposes that it has knowingly destroyed pertinent sales and shipping information and data relating to New York. Indie Guns has also repeatedly stated publicly in these videos that it will refuse to comply with any subpoena or court order. In his own words, Mr. Destefano says:

This message is for the following people in NY State that I shipped illegal gun components to... You guys need to stop calling me. You don't have to worry. I am not going to hand over my customer data to anyone... There's no record that I shipped to you any illegal components or legal components, you do not have to worry. **No one, no one is getting any customer data from me and all data that I do have has been wiped clean.**

Indie Guns, Instagram, dated October 3, 2022, available at <https://www.instagram.com/reel/CjReSYbgXKk/?hl=en> (last visited February 7, 2023).

In another video, posted a couple months later, Mr. Destefano gives more detail:

It's been a long three weeks... a lot going on and it was all legal stuff. One of the major issues that I wanted to take care of was making sure that all the customer data that was on my old platform on my website has been wiped clean. And it has. I know that. Cause I'm told that if I don't turn over this customer data they're going to come in the back door and issue the platform that I worked off of, the people

Hon. J. M. Furman

Page 4

who run that whole ecommerce platform, they're going to subpoena them for my customer data. There's not going to be any customer data... **This doesn't make any lawyers happy because they call that 'spoliation of evidence.' I don't care.** We'll deal with that when that comes around, right? Let's just get these orders out. I'm happy, I'm in a good mood. This is what I do.



Indie Guns, Instagram, dated December 17, 2022, available at <https://www.instagram.com/reel/CmSCoQHgi8q/?hl=en> (last visited February 7, 2023).

In multiple other videos, Mr. Destefano reiterates his position, even going so far as “strongly advising” another corporation to follow suit:

I'm gonna make my position very, very clear. Indie Guns, Indie Guns will not comply, absolutely not, **I don't care if there's a warrant, I don't care if there's a subpoena. I don't care.** Take me to jail. I will not turn over blanket, indiscriminate customer data if ordered to do so to the government. Never, it will never happen, period...Again, I will not comply with any order to turn over customer data, period, end of story.

Indie Guns, Instagram, dated December 17, 2022, available at <https://www.instagram.com/reel/Cm2JmQogy8E/?hl=en> (last visited February 7, 2023).

And Indie Guns wrote in a caption to another Instagram video the following:

I  guarantee all New Yorkers, and everyone who purchased through Indie Guns, that no one will ever have blanket, indiscriminate, or unfettered access to my customer data. [] All identifiable customer information I may have collected from New Yorkers has been wiped clean... using the same tool as Hillary when she deleted emails from her server. 

Indie Guns, Instagram, dated November 28, 2022, available at <https://www.instagram.com/p/Clh0X-4gfrv/> (last visited February 7, 2023).

Although all Defendants—including Indie Guns—have jointly represented to the Court that “Defendants no longer sell unfinished frames or receivers in New York pursuant to the requirements of the Jose Webster Untraceable Firearms Act,” ECF No. 113 at 2, Indie Guns’ public statements controvert that representation:

I want all my customers to realize, everything now is offline now and off-the-books. When you order, you have to call me or we have to communicate through text...nothing is automated...because it's done this way, because everything is completely off-the-books, there is no customer data. There's no names...No customer data is digitally stored by whatever platform that we use as a business...The government has no access to data, so that's the beauty of all this.

Hon. J. M. Furman

Page 5

Indie Guns, Instagram, dated December 2, 2022, available at <https://www.instagram.com/reel/ClrUA6bJfyo/?hl=en> (last visited February 7, 2023). And Mr. Destefano makes clear that the data he spoliated would have shown shipments of unfinished frames and receivers to New York consumers during the pendency of this case:

I never shipped any kits out to New York residents after [August 23, 2022, the effective date of ATF's frame and receiver rule]. I never shipped any kits out to NY residents – **that they know about**... There is no data. I don't have any customer data.

Indie Guns, Instagram, dated December 19, 2022, available at <https://www.instagram.com/reel/CmXJmRuALmB/?hl=en> (last visited February 7, 2023).

Indie Guns' public statements show that it is aware of its obligations and is deliberately and knowingly circumventing the law. *See also* Indie Guns Instagram video, available at <https://www.instagram.com/reel/CjWWeoqgM2M/?hl=en> (last visited February 7, 2023) ("Unserialized, untraceable, unregistered gun components. That's what we need to do is flood this damn market.").

Based on this troubling, emerging record, the State has designed its immediate request for discovery from Defendant Indie Guns to serve two goals. First, the State seeks to ascertain at this earliest juncture what and how much spoliation Indie Guns has committed to date in order to analyze the prejudice the State has already suffered and seek appropriate relief. Second, the State seeks to capture any still existing shipping or sales information or data that is subject to Rule 26 discovery in this matter before it too may be destroyed.

The State filed its original complaint in June 2022, and this Court has stayed discovery during the pendency of Defendants' motions to dismiss. At least one Defendant claims to have used the intervening time to destroy critical evidence while continuing to sell illegal products "off the books." Plaintiff respectfully requests that the Court grant this application for limited, streamlined discovery which will smoothly progress this litigation, make settlement negotiations possible, and preserve core documents that are under threat of destruction.

We thank the Court for its time and consideration.

Respectfully submitted,

/s/ Monica Hanna

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Cc: All counsel of record (via ECF)